

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN GREGORY LEWIS,) Case No. CV 08-7642-AHM(RC)
vs.)
Petitioner,)
) OPINION AND ORDER ON A
) PETITION FOR HABEAS CORPUS
GOV. ARNOLD SCHWARZENEGGER,)
) Respondent.)
)

On October 22, 2008, petitioner Brian Gregory Lewis, a state inmate confined at California State Prison in Lancaster, California, proceeding pro se, filed a habeas corpus petition under 28 U.S.C. § 2254 in the United States District Court for the Eastern District of California, which transferred the action to this district court on or about November 19, 2008, opining petitioner "challenges a prison disciplinary action." However, petitioner has not checked the box on the petition stating the petition concerns "Prison discipline," and it is not at all clear to this Court that the petitioner is challenging prison discipline. Since the nature of petitioner's complaint is not clear, on November 24, 2008, the Court dismissed the petition with leave to amend, pursuant to Fed. R. Civ. P. 12(e), and ordered

petitioner to file an amended petition within thirty days.

DISCUSSION

Rule 1 of the Rules Governing Section 2254 Cases in the United States District Courts ("Rules") provides that the Rules govern the procedure in the federal district courts on an application under 28 U.S.C. § 2254 by a person in custody pursuant to a judgment of a state court. 28 foll. U.S.C. § 2254, Rule 1. As an initial matter, Rule 2(a), 28 foll. U.S.C. § 2254, requires a habeas corpus petition must comply with the following format:

If the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state officer who has custody.

Rule 2(a). Here, petitioner improperly named the Governor of the State of California as the respondent. "The proper respondent in a federal habeas corpus petition is the petitioner's 'immediate custodian.'" Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam) (citation omitted). "This person typically is the warden of the facility in which the petitioner is incarcerated." Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994); Brittingham, 982 F.2d at 379. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction." Stanley, 21 F.3d at 360; Belgarde v. State of Montana, 123 F.3d 1210, 1212 (9th Cir. 1997). Clearly, the Governor is not petitioner's "immediate custodian." Additionally, the Court found the petition was indefinite and vague as to whether petitioner was

1 challenging prison discipline or some other matter.

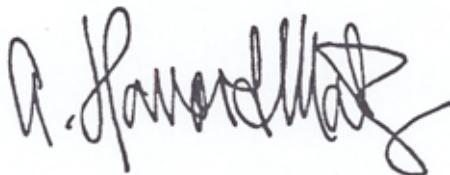
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3 Although this Court could have immediately summarily dismissed
4 without prejudice the habeas petition, the Court instead dismissed the
5 petition with leave to amend and ordered petitioner to file an amended
6 petition, within thirty (30) days. The petitioner was admonished that
7 failure to timely file the amended petition could result in dismissal
8 of the action. Although more than thirty days have passed, petitioner
9 has not filed an amended petition.

10
11 Rule 4 of the Rules Governing Section 2254 Cases in the United
12 States Courts provides that "[i]f it plainly appears from the face of
13 the petition and any exhibits annexed to it that the petitioner is not
14 entitled to relief in the district court, the judge shall make an
15 order for its summary dismissal. . . ." 28 foll. U.S.C. § 2254,
16 Rule 4. Since the habeas petition is defective on its face, and does
17 not name the proper respondent and is vague as to which matter
18 petitioner is challenging, it should now be summarily dismissed
19 without prejudice.

20 **ORDER**

21 IT IS HEREBY ORDERED that Judgment shall be entered SUMMARILY
22 DISMISSING without prejudice the petition for writ of habeas corpus.

23
24 DATE: January 8, 2009



A. HOWARD MATZ
UNITED STATES DISTRICT JUDGE